

sampling data. Nor does it "sandbag" Defendants. As noted in the State's Motion, Defendants received this environmental sampling data on a rolling basis as it became available. Moreover, Defendants even had the opportunity to question Drs. Cooke and Welch at their depositions about this 2008 environmental sampling data.

Defendants' reliance on *Palmer v. Asarco*, 2007 LEXIS 56969 (N.D. Okla. Aug. 3, 2007), is similarly misplaced. In excluding a supplemental report, the *Palmer* court explained that "Dr. Brown could have performed the same modeling in a timely fashion and, if he were going to perform site specific modeling, plaintiffs should have disclosed his modeling report within the deadlines for expert disclosures." 2007 LEXIS 56969, *16. Here, of course, it was impossible for Drs. Cooke and Welch to have the 2008 environmental sampling done at the time their report was disclosed because the spring and summer 2008 sampling period had not yet even started.

Yet further, Defendants' reliance on *Quarles v. United States*, 2006 LEXIS 96392 (N.D. Okla. Dec. 5, 2006), and *Akeva v. Mizuno*, 212 F.R.D. 306 (M.D.N.C. 2002), is misplaced. In *Quarles* the court found that the supplementation was "a clear attempt to bolster Fisher's opinions in the face of criticism expressed by Defendants' experts" and noted that "[p]laintiffs' counsel admitted . . . that Fisher initiated his soil testing in response to the Defendants' expert's attack." 2006 LEXIS 96392, *14. In *Akeva* the court found that the proposed supplementation "may also be characterized as makeup for initially inadequate or incomplete preparation." 212 F.R.D. at 310. Nothing of the sort has occurred here. Drs. Cooke and Welch's proposed supplemental expert report was not precipitated by criticisms by Defendants' experts or inadequate or incomplete preparation. It was done, as noted above, to update their previous analyses and conclusions in their May 29, 2008 expert report with the 2008 environmental sampling data.

In addition to, as demonstrated above, their legal analysis being flawed, Defendants' arguments about fairness ignore the following facts: (1) that they (and their experts) have now had the 2008 environmental sampling data relied upon in the proposed supplemental expert report for many months now; (2) that they were provided with a draft of the proposed supplemental expert report in early December at Dr. Cooke's deposition; (3) that they had the opportunity to question Drs. Cooke and Welch at their depositions about this 2008 environmental sampling data; and (4) that the discovery cut-off is still several months away. It thus would be fundamentally unfair for Defendants' experts to be able to consider and perhaps utilize the 2008 environmental sampling data in their expert reports while precluding the State from doing so.

Simply put, the State has been diligent in its disclosure of information underlying the proposed supplemental expert report and its request for leave to serve same. Defendants' suggestions of prejudice do not withstand scrutiny.

WHEREFORE, the State's Motion for Leave to Serve a Supplemental Expert Report by Drs. Cooke / Welch should be granted.

Respectfully Submitted,

W.A. Drew Edmondson OBA # 2628
ATTORNEY GENERAL
Kelly H. Burch OBA #17067
J. Trevor Hammons OBA #20234
Daniel P. Lennington OBA #21577
ASSISTANT ATTORNEYS GENERAL
State of Oklahoma
313 N.E. 21st St.
Oklahoma City, OK 73105
(405) 521-3921

s/Robert A. Nance

M. David Riggs OBA #7583
Joseph P. Lennart OBA #5371
Richard T. Garren OBA #3253
Sharon K. Weaver OBA #19010
Robert A. Nance OBA #6581
D. Sharon Gentry OBA #15641
David P. Page OBA #6852
RIGGS, ABNEY, NEAL, TURPEN,
ORBISON & LEWIS
502 West Sixth Street
Tulsa, OK 74119
(918) 587-3161

Louis W. Bullock OBA #1305
Robert M. Blakemore OBA 18656
BULLOCK, BULLOCK & BLAKEMORE
110 West Seventh Street Suite 707
Tulsa OK 74119
(918) 584-2001

Frederick C. Baker
(admitted *pro hac vice*)
Lee M. Heath
(admitted *pro hac vice*)
Elizabeth C. Ward
(admitted *pro hac vice*)
Elizabeth Claire Xidis
(admitted *pro hac vice*)
MOTLEY RICE, LLC
28 Bridgeside Boulevard
Mount Pleasant, SC 29465
(843) 216-9280

William H. Narwold
(admitted *pro hac vice*)
Ingrid L. Moll
(admitted *pro hac vice*)
MOTLEY RICE, LLC
20 Church Street, 17th Floor
Hartford, CT 06103
(860) 882-1676

Jonathan D. Orent
(admitted *pro hac vice*)
Michael G. Rousseau
(admitted *pro hac vice*)
Fidelma L. Fitzpatrick
(admitted *pro hac vice*)
MOTLEY RICE, LLC
321 South Main Street
Providence, RI 02940
(401) 457-7700

Attorneys for the State of Oklahoma

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of January, 2009, I electronically transmitted the above and foregoing pleading to the Clerk of the Court using the ECF System for filing and a transmittal of a Notice of Electronic Filing to the following ECF registrants:

W. A. Drew Edmondson, Attorney General	fc_docket@oag.state.ok.us
Kelly H. Burch, Assistant Attorney General	Kelly_burch@oag.state.ok.us
J. Trevor Hammons, Assistant Attorney General	trevor_hammons@oag.state.ok.us
Daniel P. Lennington, Assistant Attorney General	daniel.lennington@oag.ok.gov

M. David Riggs	driggs@riggsabney.com
Joseph P. Lennart	jlennart@riggsabney.com
Richard T. Garren	rgarren@riggsabney.com
Sharon K. Weaver	sweaver@riggsabney.com
Robert A. Nance	rnance@riggsabney.com
D. Sharon Gentry	sgentry@riggsabney.com
David P. Page	dpage@riggsabney.com
RIGGS, ABNEY, NEAL, TURPEN, ORBISON & LEWIS	

Louis Werner Bullock	lbullock@bullock-blakemore.com
Robert M. Blakemore	bblakemore@bullock-blakemore.com
BULLOCK, BULLOCK & BLAKEMORE	

Frederick C. Baker	fbaker@motleyrice.com
Lee M. Heath	lheath@motleyrice.com
Elizabeth C. Ward	lward@motleyrice.com
Elizabeth Claire Xidis	cxidis@motleyrice.com
William H. Narwold	bnarwold@motleyrice.com
Ingrid L. Moll	imoll@motleyrice.com
Jonathan D. Orent	jorent@motleyrice.com
Michael G. Rousseau	mrousseau@motleyrice.com
Fidelma L. Fitzpatrick	ffitzpatrick@motleyrice.com

MOTLEY RICE, LLC
Counsel for State of Oklahoma

Robert P. Redemann	rredemann@pmrlaw.net
Lawrence W. Zeringue	lzingue@pmrlaw.net
David C. Senger	dsenger@pmrlaw.net
PERRINE, MCGIVERN, REDEMANN, REID, BARRY & TAYLOR, P.L.L.C.	

Robert E Sanders	rsanders@youngwilliams.com
Edwin Stephen Williams	steve.williams@youngwilliams.com
YOUNG WILLIAMS P.A.	
<u>Counsel for Cal-Maine Farms, Inc and Cal-Maine Foods, Inc.</u>	

John H. Tucker	jtucker@rhodesokla.com
Theresa Noble Hill	thill@rhodesokla.com
Colin Hampton Tucker	ctucker@rhodesokla.com
Leslie Jane Southerland	ljsoutherland@rhodesokla.com
RHODES, HIERONYMUS, JONES, TUCKER & GABLE	

Terry Wayen West	terry@thewestlawfirm.com
THE WEST LAW FIRM	

Delmar R. Ehrich	dehrich@faegre.com
Bruce Jones	bjones@faegre.com
Krisann C. Kleibacker Lee	kklee@faegre.com
Todd P. Walker	twalker@faegre.com
Christopher H. Dolan	cdolan@faegre.com
FAEGRE & BENSON, LLP	

Dara D. Mann	dmann@mckennalong.com
MCKENNA, LONG & ALDRIDGE, LLP	
Counsel for Cargill, Inc. & Cargill Turkey Production, LLC	

James Martin Graves	jgraves@bassettlawfirm.com
Gary V Weeks	gweeks@bassettlawfirm.com
Paul E. Thompson, Jr	pthompson@bassettlawfirm.com
Woody Bassett	wbassett@bassettlawfirm.com
K. C. Dupps Tucker	kctucker@bassettlawfirm.com
BASSETT LAW FIRM	

George W. Owens	gwo@owenslawfirmpc.com
Randall E. Rose	rer@owenslawfirmpc.com
OWENS LAW FIRM, P.C.	

Counsel for George's Inc. & George's Farms, Inc.

A. Scott McDaniel	smcdaniel@mhla-law.com
Nicole Longwell	nlongwell@mhla-law.com
Philip Hixon	phixon@mhla-law.com
Craig A. Merkes	cmerkes@mhla-law.com
MCDANIEL, HIXON, LONGWELL & ACORD, PLLC	

Sherry P. Bartley	sbartley@mws gw.com
MITCHELL, WILLIAMS, SELIG, GATES & WOODYARD, PLLC	

Counsel for Peterson Farms, Inc.

John Elrod	jelrod@cwlaw.com
Vicki Bronson	vbronson@cwlaw.com
P. Joshua Wisley	jwisley@cwlaw.com
Bruce W. Freeman	bfreeman@cwlaw.com
D. Richard Funk	rfunk@cwlaw.com
CONNER & WINTERS, LLP	

Counsel for Simmons Foods, Inc.

Stephen L. Jantzen	sjantzen@ryanwhaley.com
Paula M. Buchwald	pbuchwald@ryanwhaley.com
Patrick M. Ryan	pryan@ryanwhaley.com
RYAN, WHALEY, COLDIRON & SHANDY, P.C.	

Mark D. Hopson	mhopson@sidley.com
Jay Thomas Jorgensen	jjorgensen@sidley.com
Timothy K. Webster	twebster@sidley.com
Thomas C. Green	tcgreen@sidley.com
Gordon D. Todd	gtodd@sidley.com
SIDLEY, AUSTIN, BROWN & WOOD LLP	

Robert W. George	robert.george@tyson.com
L. Bryan Burns	bryan.burns@tyson.com
TYSON FOODS, INC	

Michael R. Bond	michael.bond@kutakrock.com
Erin W. Thompson	erin.thompson@kutakrock.com
KUTAK ROCK, LLP	

Counsel for Tyson Foods, Inc., Tyson Poultry, Inc., Tyson Chicken, Inc., & Cobb-Vantress, Inc.

R. Thomas Lay	rtl@kiralaw.com
---------------	-----------------

KERR, IRVINE, RHODES & ABLES

Jennifer Stockton Griffin
David Gregory Brown
LATHROP & GAGE LC
Counsel for Willow Brook Foods, Inc.

jgriffin@lathropgage.com

Robin S Conrad
NATIONAL CHAMBER LITIGATION CENTER

rconrad@uschamber.com

Gary S Chilton
HOLLADAY, CHILTON AND DEGIUSTI, PLLC
Counsel for US Chamber of Commerce and American Tort Reform Association

gchilton@hcdattorneys.com

D. Kenyon Williams, Jr.
Michael D. Graves
HALL, ESTILL, HARDWICK, GABLE, GOLDEN & NELSON
Counsel for Poultry Growers/Interested Parties/ Poultry Partners, Inc.

kwilliams@hallestill.com
mgraves@hallestill.com

Richard Ford
LeAnne Burnett
CROWE & DUNLEVY
Counsel for Oklahoma Farm Bureau, Inc.

richard.ford@crowedunlevy.com
leanne.burnett@crowedunlevy.com

Kendra Akin Jones, Assistant Attorney General
Charles L. Moulton, Sr Assistant Attorney General
Counsel for State of Arkansas and Arkansas National Resources Commission

Kendra.Jones@arkansasag.gov
Charles.Moulton@arkansasag.gov

Mark Richard Mullins
MCAFEЕ & TAFT
Counsel for Texas Farm Bureau; Texas Cattle Feeders Association; Texas Pork Producers Association and Texas Association of Dairymen

richard.mullins@mcafeetaft.com

Mia Vahlberg
GABLE GOTWALS

mvahlberg@gablelaw.com

James T. Banks
Adam J. Siegel
HOGAN & HARTSON, LLP

jtbanks@hhlaw.com
ajsiegel@hhlaw.com

Counsel for National Chicken Council; U.S. Poultry and Egg Association & National Turkey

Federation

John D. Russell
FELLERS, SNIDER, BLANKENSHIP, BAILEY
& TIPPENS, PC

jrussell@fellerssnider.com

William A. Waddell, Jr.
David E. Choate
FRIDAY, ELDREDGE & CLARK, LLP
Counsel for Arkansas Farm Bureau Federation

waddell@fec.net
dchoate@fec.net

Barry Greg Reynolds
Jessica E. Rainey
TITUS, HILLIS, REYNOLDS, LOVE,
DICKMAN & MCCALMON

reynolds@titushillis.com
jraine@titushillis.com

Nikaa Baugh Jordan
William S. Cox, III
LIGHTFOOT, FRANKLIN & WHITE, LLC

njordan@lightfootlaw.com
wcox@lightfootlaw.com

Counsel for American Farm Bureau and National Cattlemen's Beef Association

Also on this 26th day of January, 2009, I mailed a copy of the above and foregoing pleading to the following:

David Gregory Brown
Lathrop & Gage, LC
314 E. High Street
Jefferson City, MO 65101

Thomas C. Green
Sidley Austin Brown & Wood, LLP
1501 K St. NW
Washington, DC 20005

Cary Silverman
Victor E. Schwartz
Shook Hardy & Bacon LLP
600 14th St. NW, Ste. 800
Washington, DC 20005-2004

J. D. Strong

Secretary of the Environment
State of Oklahoma
3800 North Classen
Oklahoma City, OK 73118

Dustin McDaniel

Justin Allen

Office of the Attorney General (Little Rock)
323 Center Street, Suite 200
Little Rock, AR 72201-2610

Steven B. Randall

58185 County Road 658
Kansas, Ok 74347

George R. Stubblefield

HC 66, Box 19-12
Proctor, Ok 74457

s/Robert A. Nance

Robert A. Nance